



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 6, 1998

Mr. James E. Coursar
Thompson & Knight
1200 San Jacinto Center
98 San Jacinto Boulevard
Austin, Texas 78701-4081

OR98-2366

Dear Mr. Coursar:

On behalf of the Highland Park Independent School District (the "district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118469.

The district received a request for financial information and for compiled data relating to students' scores on the Iowa Test of Basic Skills, a standardized test. You state no objection to the release of financial information but propose to withhold some of the requested compiled test score information. You contend by inference that the information you propose to withhold is excepted from disclosure pursuant to Government code sections 552.026 and 552.114. You assert that this information consists of education records made confidential under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. You have also requested an opinion as to the propriety of your policy to withholding information that would tend to identify student cohorts of five or less. We have considered the issues raised in your request.

We note initially that your request for an opinion on the issue of cohort size is beyond the purview of this office and is more properly addressed to the Family Compliance Office of the Department of Education. That agency may be contacted by mail at 400 Maryland Ave. S.W., Washington, D.C. 20202-4605 or by telephone at (202)260-3887.

We then note that the district may withhold from disclosure information that is protected by FERPA without the necessity of requesting a decision from this office. Open

Records Decision No. 634 (1995). However, as you have sought a decision from this office, we will address your argument against disclosure.

Section 552.026 of the Government Code excepts "educational records" from any disclosure not in conformity with the release provisions of FERPA. "Education records" are defined under FERPA as those records that "contain information directly related to a student and are maintained by an educational agency or institution." 20 U.S.C. § 1232g(a)(4)(A). FERPA proscribes the release of "education records (or personally identifiable information contained therein other than directory information) with exceptions that do not apply here. 20 U.S.C. § 1232g(b)(1). "Personally identifiable information" as defined under federal regulations, "includes, but is not limited to: (a) The student's name; (b) The name of the student's parent or other family member; (c) The address of the student or student's family; (d) **A personal identifier, such as the student's social security number or student number;** (e) A list of personal characteristics that would make the student's identity easily traceable; or (f) **Other information that would make the student's identity easily traceable.**" 34 C.F.R. 99.3 (emphasis added). Our offices have observed that only information which would serve to identify the student is excepted from disclosure under FERPA. Open Records Decision No. 332 at 3 (1982).

Government Code section 552.114 excepts from disclosure "information in a student record at an institution funded wholly or partly by state revenue." This office has generally treated "student record" as equivalent to "education record" under FERPA. Open Record Decision Nos. 634 (1995), 539 (1990), 447 (1986), 332 (1982). We have specifically held that standardized test scores are such records. Open Records Decision No. 634 at 5 (1995).

We have also recognized that information can be included in compilations of apparently anonymous records so as to make a particular student's identity easily traceable. Open Records Nos. 352 (1982) and 206 (1978). We have opined that in such instances, if an educational agency or institution reasonably concludes that some requested information must be withheld because nondisclosure is necessary to avoid personally identifying a particular student, it may decline to release that information. Open Records No. 352 at 5 (1982).

In the instant case, the requestor has asked that standardized test scores of students be compiled with nine other data items: student number, sex, age, and ethnicity, special ed flag, teacher number, campus name, grade level and test date. As noted above, the release of student identification numbers is expressly proscribed. Further, scores on standardized tests may not be released in such a manner as to identify individual students. Therefore student identification numbers must be redacted; the remainder of the requested information may be withheld only to the degree determined by the district in good faith to be necessary to prevent identifying particular students.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 118469

cc: Ms. Beth Blankenship
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